Supreme Court, U.S.
FILED

(1) 98 1945 FEB 25 1999

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IN THE

Supreme Court of the United States

OCTOBER TERM 1989

NO. 624

C.A. BURNETTE

PETITIONER

V.

GROVE ISLE HOTEL & CLUB, et al.,
BERNARD LERNER, OFFER NISSENBAUM.

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI.

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26 pp

When a state court system fails to afford a United States citizen Due Process under the Constitution of the United States and erred in not reversing an appeal back to the lower tribunal , what violation of Federal law has been committed ?

When a State violates Federal laws under the Constitution of the United how does the Supreme Court of the United States set a precedent under the rule of law that prevents the continuation of such violations ?

When Petitioner, has filed continuous motions beginning in the Florida 11 TH. Circuit, Third District Court of Appeals and the Florida Supreme Court, reporting fraud by an attorney and Judge that resulted in the Petitioner's case being dismissed with prejudice and where Due Process under the Fourteenth an Fifth Amendment were violated when Petitioner was denied to be heard without prior notice. What can the United States Supreme Court do to uphold the Federal laws to make states accountable for such violations ?

When a fraud is perpetrated upon the state court system that violates Federal law and the court fails to address or investigate the issues what rule of law can the United States Supreme Court do to enforce these violations ?

When a question of great public importance is presented to uphold the integrity of the Judicial Court system when that court system is in violation of federal law how can the United States Supreme Court rule to uphold the rule of law ?

When violation of the Code of Ethics and Canons are violated by an Attorney by continuous submission of false, fraudulent Orders that do not reflect what the court has ordered and the Orders are signed by a Judge and those violations effect Federal law what rule of law can the United States Supreme Court enforce for the integrity of the Justice system to be maintained ?

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SUPREME COURT

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Mercer v. Raine, **443 So. 2d. 944 (Fla. 1993).**

Roller v. Holly, **176 U.S. 398, 20 S Ct., 410, 44 L.Ed 520 (1900 .)**

Stanley v. Illinois, **405 U.S. 645, 647, S.Ct. 1208, 331 LEd. 2d. 551.**

The Florida Bar Complainment v.s. Keith Roberts 689 So. 2d. 1049 (Supreme Ct. of (Fla. 27, 1997)

JURISDICTION

The Supreme Court of Florida entered its Order on November 3, 1998 for Petition for Review is denied. No Motion for Rehearing would be entertained by the Court. App., 1a.

Timely petitions for rehearing and for rehearing *en banc* were filed in the District Court of Appeal of Florida Third District, motion was issued on June 10, 1998 , denying both rehearing and for rehearing *en banc* . App., 2a.

An Order granting an extension of time to file the Petition for Writ of Certiorari, to the Supreme Court was granted on January 28, 1999. App., 3a.

The jurisdiction of this Court is invoked pursuant to U.S.C. sec. 1254 (1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United Stated Constitution provides as follows:

*** * * Judicial review of { the Due Process Clause} of the Fourteenth Amendment inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those Canons of decency and fairness which express the notions of justice.**

Under the Fifth and Fourteenth Amendments, for more than a century the central meaning of procedural due process has been clear: " Parties whose rights are to be affected are entitled to be heard; and in order that they

may enjoy that right they must be notified." *Baldwin v. Hale*, 68 U.S. 233, 1 Wall. 223, 17 L.Ed. 531.

*** * * It is equally fundamental that the right to notice and an opportunity to be heard " must be granted at a meaningful time and in a meaningful manner.**

***"Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187,1191, 14 L.Ed.2d 62.**

STATEMENT OF THE CASE

The Petitioner moves that the State Courts of Florida have violated constitutional rights under the Fourteenth Amendment under Due Process. Under sec { 287 }, states in cases involving constitutional rights, the Supreme Court states: " duty . . . to make its own independent examination of the record when federal constitutional deprivations are alleged. " *Napoe v. Illinios*, 360 U.S. 264 (1959).

The petitioner's case, *C. A. Burnette v. Grove Isle Hotel & Club, et al, a Florida Corporation, Bernard Lerner, Offer Nissenbaum*, was filed on September 11, 1995., in the Eleventh Circuit Court , Miami, Florida. This case involves false imprisonment and Environmental dumping. The defendants filed for a motion to dismiss and was set for a special set hearing on January 16, 1997 at 2:00 PM.

The petitioner filed a motion requesting an appearance by telephone under and pursuant to Florida Rules of Judicial Administration Rule 2.071, since petitioner is located in Washington, D.C., the motion was

allowed as it had been for the three previous hearings before Judge Sidney Shapiro. The petitioner moved for relief that the hearing be denied because the defendants motion to dismiss was based on a false, fraudulent submitted Order by the defendants attorney Richard Wassenberg. App., 4a (Index to record 493, 495-501, 502-504, 506,).

The petitioner scheduled for a telephone appearance from Washington, D.C., was denied on January 16, 1997 from attending the hearing. Under rule of law there must be sufficient notice and time given. " Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified." *Baldwin v. Hale*, 68 U.S. 233, 1 Wall. 223, 17 L.Ed. 531.

The petitioner was denied Due Process under the Fourteenth Amendment and under the Fifth Amendment . The case was dismissed. *with prejudice.*

The Petitioner was denied the opportunity to be heard A denial of the opportunity to be heard is in direct conflict with both State , Federal, and Supreme Court decisions. Petitioner arranged for a Court Reporter to attend the hearing so the Hearing in its entirety would be preserved for the record. App., 5 a.

This preserved record holds many documented issues that protect the petitioner in reflecting the violation of due process , documentation of false Orders and false obtained judgments that were obtained by the defendants attorney Richard Wassenberg. Further the transcript reveals that the petitioner's case was not dismissed with prejudice as

the returned Order states. App. 6-12 a.

Petitioner filed an Appeal to the Third District Court of Appeals of Florida on January 17, 1997. The appeal was affirmed. Timely petitions for a rehearing, and for a hearing *en banc*, and for certification were denied on June 10, 1998. App. 2a Petitioner filed an Appeal to the Supreme Court of Florida. Petition for review was denied and no motion for Rehearing was allowed by the Court on November 3, 1998. App. 1a.

The first instance of federal violations began in the lower tribunal, the Eleventh Circuit. Petitioner asserted these violations through court Motions to inform the court that after each Motion calendar hearing of which an Order was issued, the Order was never completed by the defendants attorney Richard Wassenberg while in chambers or even shortly after. Instead the defendants attorney returned the Orders days or weeks after the court hearing was held. Petitioner was not copied with these Orders prior to their submission.

Each return Order contained the chosen contents of the attorney not the courts ruling as stated by the Judge. The *ORDER'S* returned contained false, misleading an fraudulent contents that not only prejudiced the Petitioner's case but in the same instance violated federal law. Due process was not afforded the Petitioner. To further aspirate these egregious acts the court chose to ignore the many motions filed by the petitioner seeking relief through imposed sanctions against the attorney

Richard Wassenberg. All moved motions by Petitioner are of record with 11 Th. Circuit, Third District Court of Appeals, and the Supreme Court of Florida. App., 13-44a. In *Hazel- Atlas Glass Co. v. Hartford- Empire Co.* 322 U.S. 238, 245-46, 64 S.Ct. 997, 1001, 88 L.Ed. 1250, 1255-56 (1944),. the Supreme Court reversed: stating,

*** * * Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments . Furthermore,, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud * * ***

As seen in *Smith v. Great Lakes Airlines, Inc.*, fraud is one of the substantive grounds upon which relief may be granted in such an action.

The petitioner each time was confronted with not only the submission of false returned orders but the presiding Judge Sidney Shapiro signing these motions upon there submission back to the court. App., 4 a. (Index to Record 495-501, 502-504, 506.

Retaliation was further shown by gross misconduct of manners in violation of the Code of Canons by the Judge Sidney Shapiro, including ex-parte communication with the defendants attorneys, Richard Wassenberg and Bruce Telander. Further in a Motion Calendar hearing the petitioner orally and upon motion requested a clarification from the Judge as to why the court was condoning the return of Orders days later that were false. The Judge rudely hung up and Petitioner had to return the call by telephone appearance. Each motion documenting these allegations are of record. App., 4, a. (Index to Record 506).

Petitioner continued to raise these issues of violations by the attorney and Judge to no avail. Petitioner through Motions requesting sanctions on these violations were denied in first instance in the lower tribunal and through out the Appeal by the Third Appellate Court, and continued through the Supreme Court of Florida, despite the Petitioner moving that under rule of law the court had an obligation in order to protect the integrity of the court and the federal and Constitutional rights of the Petitioner. All motions for sanctions on these issues were denied. App., 13-44 a.

Under the *Rules Regulating the Florida Bar Rule 3-7.8 Procedures before a Circuit Court (a)* Filing of Motion. Whenever it shall be made known to any of the judges of the district courts of Appeal or any judge of a circuit or a county in this state that a member of the Florida Bar practicing in any of the courts of the district or judicial circuit or county has been guilty of any unprofessional act

as defined by these rules, such Judge may direct the state attorney for the circuit in which the alleged offense occurred to make in writing a Motion in the name of the State of Florida to discipline such attorney, setting forth in the Motion the particular act or acts of conduct foe which the attorney is sought to be disciplined. Petitioner upon Appeal to the Third District Court of Appeal, submitted in the initial brief the points of issues concerning the submission of false Orders and the signing by the court on these Orders.

Petitioner presented forty-four cases, comprising of direct conflict with intra- district courts that confirmed the lower court erred in dismissing the Petitioner's case with prejudice. App., 15-17, 22-23, 37-41 a.

(1) ***Florida District Court of Appeal.(2) Anthony*** **v.** ***Schmitt,*** **557 So. 656 (Fla. 2d. DCA 1990).(3)** ***Atena Insurance Company v. Estero Manufacturing & Building Supply, Inc.***

Fla. App. 1965, 174 So. 2d 747 (4) ***Beasley v. Girten,*** **61 So. 2d. 179 (Fla. 1952).(5)*.Beasley, Lifeguard Corp. v. U.S. Corp.*, So2d 94 (Fla. 2d DCA 1983). (6)** ***Beauchamp v. Collins,*** **500 So. 2d 294 (Fla. 3d. DCA 1986). (7)** ***Carr v. Dean Steel Bldgs., Inc.,*** **619 So. 2d. 392, 394 (Fla. 1st DCA 1993)..(8)** ***Clay Livingston v. State Dep't of Corrections,*** **481 So. 2d 2 (Fla. 1st DCA 1985). (9)** ***Dave's Aluminium Siding, Inc. v. C.& M. Ventures,*** **582 So. 2d. 147, (Fla. 3dDCA 1991)...*Del Duca v. Anthony,*** **587 So. 1306 (Fla. 1991). (11)*Epps v. Hartley,*** **495 So 2d 921, 922 (Fla. 4th DCA 1986).**

(12) ***Hernando Martin v. Jose R.E. Batista,*** **639 So. 630 (Fla 3d DCA 1994).(13)** ***Holl v. Talcott, Fla.*** **1996, 191 So. 40.(14** ***Pey v. Turnberry Tower*** **Corp.., 474 So. 2d. 1279 (Fla. 3d. DCA 1985)..(15)*Pilkington PLC v. Metro Corporation,*** **526 So. 2d. 943.. (16)** ***Maxwell v. Rolls Royce***

Motors, Inc. 522 So. 2d. 1943 (Fla. 4th DCA 1988).(17) *Maxwell Summitt Chase Condominium Ass'n v. Protean Investers, Inc.* 421 So. 2d. 562 (Fla. 3d. DCA 1982)..(18)*Morales v. Four Star Poultry & Provision* Co. 523 So. 2d.1183 (Fla. 3d DCA)..(19)Ramos v. Sanchez, 375 So. 2d 51 (Fla. 2d 1979)...(20)*Shelia Rules v.Richard Cambell 661 So. 2d 408(Fla 3rd DCA 1995). 21) Southern Pine Corp. v. Capital National Bank,* 324 So. 2d 112 3d DCA.. (22*) Stresscon Int'l, Inc. v. Ralph Merritt Dev. Corp.,* 384 (Fla.3d DCA). (23) *Tri Star Invs., Inc. v. Miele,* 407 So 2d 292 (Fla. 2d DCA 1981).(24) *Turner v. Anderson,* 376 So. 2d 899 (Fla. DCA 1979).... (25) *Ulm's Estate,* 345 So. 2d 1099 (Fla. 2d DCA 1977)..(26*) Wallraff v. T.G.I. Friday's* Inc. 490 So. 2d 50 (Fla. 1986).(27) *Westinhouse Electric Supply Company v. Diplomat Electric, Inc.* 221 So. 2d 436.(28) Wilson v. Woodard, 602 So. 2d. 547 (Fla. 2d. DCA 1992).*FLORIDA RULES(29) Fla. Prof. Resp. D.R and Fla. Stds. Imposing Law. Sanc.* 9.3..4-1.6 (A)...6.0, 6.1, 6.2 6.11, (30) *Fla. Code Jud. Conduct Canon* .2A, 3B(7). (31)*Fla. Code Jud. Conduct* Canon 3. (B), (5)..(D)...(E).. (32*) Fla. Code of Prof. Resp.* d.r. 4-3.5..

(33) F. R. Civ. P. 1.500, (B).3.7, 3.8..(34) *Fla. R. Civ. P.* 1.510 (A)..(C) (D).(35) *Fla. R. Civ. P.R.* 1.540 (B), (B3).(36) *Fla. R Jud. 2.071.*(37) *Fla. R. Jud. Adnin* 2.060 (d),(k)

(38) *Fla. Code of Prof. Resp.Rule* 4-8.4 (39*) Fla.Rules of Civ. P. Evidence* Code ch. 90.104,90.801,90.802 *SUPREME COURT (40) Armstrong v. Manzo,* 330 U.S. 545, 85 .Ct. 1187, 1191, 14 L.Ed. 2d. 62. (41) *Baldwin v. Hale,*68 U.S. 223, I WALL., 223, 17 LEd. 531. (42) *Celotex Corp. v. Catrett,* 477 U.S. 317, 106, S.Ct. 2548, 91 LE2d. 265.

(43) *Joint Anti- Facist Refugee Committee v. McGrath,* 341 U.S. 123, 170-172, 71 S.C.t.___624, 95 LEd. 817. (44)

Mercer v. Raine, 443 So. 2d. 944 (Fla. 1993).*(45) Roller v. Holly*, 176 U.S. 398, 20 S Ct., 410, 44 L.Ed 520 (1900 .) (46) *Stanley v. Illinois*, 405 U.S. 645, 647, S.Ct. 1208, 331 LEd. 2d. 551. (47) *The Florida Bar Complainment v.s. Keith Roberts 689 So. 2d. 1049 (Supreme Ct. of (Fla. 27, 1997)*

The Court failed to address violations of federal law, due process,, unethical violations by defendants attorney Richard Wassenberg , and Judge Sidney Shapiro.

Further the Supreme Court of Florida to avoid addressing federal issues chose to deny Petitioner's Petition for review while in the same instance a motion was pending before the court requesting sanctions on the continued violations and misconduct. The Supreme Court of Florida after denying review of the case ruled on a motion that had been pending before the court prior to the ruling on the petition for review, choosing to moot the motion rather than face the political ramifications against an attorney and a Judge's misconduct. App., 42 a.

ARGUMENT

Petitioner in addressing the question to the Supreme Court. What rule of law can set a precedence for such occurrences not to continue throughout the state court systems when the very occurrences violates federal law and the constitutional protected rights of the individual ?

Our forefathers certainly did not relay in the Constitution for attorneys to have the right to be the Judge and Jury. Rather the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination.

The judgment of the Eleventh Circuit in the lower tribunal has significantly eroded the scope and operation of the justice that is to be afforded to all under the Constitution of the United States.

Postponing review is not likely to contribute to the reasoned resolution of the questions presented. The questions presented are of recurring importance and conflicts upon the State and Federal courts exist on this issue. The American Bar Association has shown concern over this issue and finds it to be wide spread among many states. In instance some court systems have a check system by having clerks complete the Orders rather than give the attorneys any opportunity to submit false orders or to prevent any instance of impropriety. Accordingly, this Courts review is warranted.

The court emphasized that the authority to enforce the Fourteenth Amendment is a broad power to remedy past and present discrimination and to prevent future discrimination. Accordingly, under Section 5, Congress can prohibit activities that themselves are not unconstitutional when it acts to enforce a constitutional right.. *City of Rome v. United States,* 446 U.S. 156, 177 (1980) (Congress may prohibit state conduct that "create{ s } the risk" that constitutional rights will be infringed). The court held, in *Boerne v. Flores*, 117 S Ct. 2157 (1997) that Congress's power to enforce the Fourteenth Amendment is confined to the enactment of laws that seek to " deter{} or remed {y }" violations of the Amendment. The court emphasized that, where Congress deems it necessary in pursuit of remedial or preventive ends " to prohibit conduct which is not itself unconstitutional," Congress authority is sufficiently " broad" to sustain such a prohibition and the court explained that there must be a

"congruence and proportionality" between the identified constitutional harms and the statutory remedy. and the means adopted to that end " *Boerne v. Flores*, 117 S. Ct. 2157 (1997).

One of the primary questions presented in the case is whether the state statutes are constitutionally defective in failing to provide for hearings "at a meaningful time. The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person.

It has long been recognized that " fairness can rarely be obtained by secret, one sided determination of facts decisive of rights. * * *{ And no better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice and opportunity too meet it." *Joint Anti- Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-172, 71 S.Ct. 624, 647, 95 L.Ed. 817 (Frankfurter, J. concurring).

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented." This Court has not * * * embraced the general proposition that a wrong may be done if it can be undone." *Stanley v. Illinois,* 405 U.S. 645, 647, 92 S.Ct. 1208, 1210, 31 LEd.2d. 551.

This is not a new principle of Constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments.

The Court has traditionally insisted that, whatever its form, opportunity for that Hearing must be provided before the deprivation at issue takes effect * * *" That the hearing required by due process is subject to waiver,

and is nor fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived . *Boddie v. Connecticut*, 401 U.S. 371, 378, 91, SCt. 780, 786, LEd.2d. 113.

The jurisdiction of this court is invoked under:

(1). Sec. {249}, Appellate Jurisdiction Over State Court Decisions: which states the Supreme Court has appellate jurisdiction over state court decisions.

a. Foundation of power:

(1) Constitutional basic sec.{250 } Article III provides that the Supreme Court "shall have appellate Jurisdiction, both as to Law and Fact.

(2) Judiciary Act of 1789 sec. {251 } Section 25 of the Judiciary Act of 1789 provided for the Supreme Court appellate review of state court decisions in which the state court decided against a federal right that had been asserted and in which the question presented immediately respected that federal right.

(3) Constitutionality of Supreme Court review of state court decisions : sec. { 252 }, conceded that the state courts were obliged to follow federal law faithfully. In the famous case of *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816), the Supreme Court held that Congress had the power to authorize the Supreme Court to exercise appellate jurisdiction over questions of federal law decided in the state courts. Further in *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590 (1875) brought up an exception that the court may decide questions of state law as well when the state court has manipulated state law to avoid the command of federal law. The courts opinion in Murdock, warned that it had " such powers as may be necessary to cause { ITS } judgment . . . to be respected ."

Under sec. { 271 } State courts wishing to achieve a particular result and to protect that result from the Supreme Court reversal are obliged to make clear the state law basis for their decision. Petitioner moves that the state courts have not meet this rule of law. Under sec { 274 } states if the state procedure violated due process, either on it's face or as applied, it cannot bar Supreme Court consideration of a federal issue. *Michel v. Louisiana*, 350 U.S. 91 (1955). Further under sec { 276 } prevents discrimination against Federal law or evasion of Supreme Court Review and states: If a state court applies its procedural rules so as to discriminate against the assertion of a federal claim, *Wolfe v. North Carolina*, 364 U.S. 177 (1960), or to evade Supreme Court review, *Rogers v. Alabama*, 192 U.S. 226 (1904), the Supreme Court may decide the federal issue despite the asserted state procedural bar.

The petitioner moves that the state courts have violated constitutional rights under the Fourteenth amendment on failure of Due Process. Under sec. { 287 } states in cases involving constitutional rights, the Supreme Court states " duty . . . to make its own independent examination of the record when federal constitutional deprivations are alleged. "*Napoe v. Illinois*, 360 U.S. 264 (1959).

Petitioner, invokes pursuant to 28 U.S.C. sec 1254 (1). And further jurisdiction of this court under Supreme Court Rule 10.1 (b); which states a split of authority between a state court and another state court or a federal court of appeals on a federal question.

And under Supreme Court Rule 10.1 (c), which states an important unsettled question of law.

The judgment sought to be reviewed is from the Florida Supreme Court denying jurisdiction and denying a rehearing.

The petitioner , asserts that Constitutional Rights under the Fourteenth and Fifth Amendment have been violated under Due Process.

That further the courts under rule of law failed to address or acknowledge fraud upon their Court by the defendants Counsel Richard Wassenberg, by the submission of false orders and judgments presented by Attorney Richard Wassenberg, in the Eleventh (11) Judicial Circuit, Third District court of Appeals of Florida and the Florida Supreme Court.

That the court has failed to investigate as required under Rule of Law with the signing of these false orders and judgments as well as a violation of due process by the presiding Judge Sidney B. Shapiro.

In *Michigan v. Long*, 463 U.S. 1032, 103 S. Ct. 3469, 77Ed.2d. 1201 (1983), the court said: . . . " The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting as it does, on our solemn responsibility for maintaining the Constitution inviolate."

The petitioner in the lower tribunal court was not permitted to attend the Hearing on January 16, 1997 that resulted in the dismissal of the case with prejudice. The court gave no written or verbal prior notice that it was not going to allow the petitioner to attend by telephone appearance.

This case involves a false imprisonment of eleven hours (11), and involves Environmental dumping. This case began in 1995.

The Petitioner, shows as just cause that the Defendants Respondents, has submitted fraudulent documents and statements . to the courts. App.., 4, 7-9, 13-41 a. 1.The Defendant/ Respondent, submitted an order that he was the author of not the court, but leads the court to belief that this was a statement from the court. Moving for the court too compare his statement with that of the Official Court Reporters Transcript transcribed on the final hearing of January 16, 1997. App. 7-10 a..

This transcript shows the complaint of the Plaintiff was not dismissed with prejudice, the order was false this is of record from the transcript. App., 5-7, . Further the Defendant/ Respondent failed to move in this hearing for the defendants in any form or seek a judgment for the defendants, Bernard Lerner or Offer Nissenbaum. As proof submitted is the official transcript of the final hearing on January 16, 1997. (App.1-5 .).

Petitioner, moves that the judgment submitted by the / Respondent, is a Fraudulent judgment under the *Florida Rules of Civil Procedure Rule*_1.540. (3). Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. And further violation under the Florida Bar Code of Professional Responsibility.

6.0 VIOLATIONS OF DUTIES OWED TO THE LEGAL SYSTEM. 6.1 FALSE STATEMENTS , FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION;

States: Absent aggravating or mitigating circumstances, and upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial

to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court. App., 43 a. 6.11 Disbarment is appropriate when a lawyer: (a) with the intent to deceive the court, knowingly makes a false statement or submits a false document or (b), improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceedings. App., 43 a.

This Judgment was never moved for in any motions or granted in the final hearing of January 16, 1998. This judgment was in fact signed on the 17 of January, 1997 in chambers, was this conducted ex-parte ? There was no hearing or a motion for a hearing for this date. App., 4, 8, (Index to Record 507--508.).

Many cases throughout history have shown that the courts have stated :

To procure something by fraud, that fact may be shown, and if shown seasonably, the court will not tolerate or support an act, otherwise lawful, which is accomplished by unlawful means ** Such a fraud is one affecting the**

court itself and the integrity of its process. ***

Further the Supreme Court of Florida , in the recent case of *The Florida Bar Complaint vs. Keith Roberts*, 689 1049 (Supreme Ct. of Fla., Feb. 27, 1997, states:

Courts have added to the penalties recommended by disciplinary boards. Courts may impose sanctions more severe than can the governing disciplinary body, The Supreme Court has recently imposed higher sanctions in the absence of disciplinary records and intentional

misrepresentation and fraud. In the *Florida Bar Complaint_vs. Keith Roberts*, *Id.*, the Florida Supreme Court added a 90 day suspension to a reprimand, three years probation, restitution, and a host of other conditions.

The Plaintiff/ Petitioner, has documented beginning in the Lower Tribunal and throughout the Third District Court of Appeals the continued submission of false Orders and statement submitted by the Insurance attorney Richard Wassenberg. In addition to Judge Sidney Shapiro signing these Orders. The Plaintiff/ Petitioner, made the courts aware of these by filing the appropriate motions. These motions can be found in the record and would ask the court to review the record to clarify why this case is of such public importance. Justice to the public is not being afforded when these activities are clearly being ignored even when you report a judge or an attorney.

That under the *Rules Regulating the Florida_Bar Rule 3-7.8 Procedures before a Circuit Court*_(a) Filing of Motion. Whenever it shall be made known to any of the *judges* of the district courts of Appeal or *any judge* of a circuit or a county in this state that a member of the Florida Bar practicing in any of the courts of the district or judicial circuit or county has been guilty of any unprofessional act as defined by these rules, such Judge may direct the State Attorney for the circuit in which the alleged offense occurred to make in writing a Motion in the name of the State of Florida to discipline such attorney, setting forth in the Motion the particular act or acts of conduct foe which the attorney is sought to be disciplined.

WHEREFORE petitioner moves for the foregoing

reasons of statement and argument for the court to grant this Petition for a Writ of Certiorari, based on the questions of violations of Federal Law, Judicial Misconduct, and violations of the Canons and code of Ethics governing Attorney's and Judges. These violations were in direct result of the Petitioners case being dismissed with Prejudice and was a violation of Federal Law under the Fourteenth and Fifth Amendments. These violations and fraud upon the Court system are questions of great public importance in order to uphold the Judicial system and to continue the integrity and justice for all that was intended by the forefathers that founded the Constitution.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

C.A. Burnette

601 Pennsylvania Avenue

South Building # 900

Washington, D.C. 20004

202-610-7366

Supreme Court, U.S.
FILED

IN THE

98 1945 FEB 25 1999

Supreme Court of the United States

OFFICE OF THE CLERK

OCTOBER TERM 1998

NO.

C.A. BURNETTE

PETITIONER

V.

GROVE ISLE HOTEL & CLUB, et al.,
BERNARD LERNER, OFFER NISSENBAUM.

RESPONDENTS

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI.

C.A. BURNETTE
601 PENNSYLVANIA AVENUE
SOUTH BUILDING NO. 900
WASHINGTON, D.C. 20004
202-610-7366

APPENDIX

SUPREME COURT OF FLORIDA ORDER PETITION FOR REVIEW DENIED, NO REHEARING DENIED 1

THIRD DISTRICT COURT OF APPEAL PETITION FOR REHEARING, AND REHEARING EN-BANC DENIED. 2

SUPREME COURT OF THE UMTED STATES EXTENTSION FOR WRIT OF CERTIORARI GRANTED. 3

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SUPREME COURT OF FLORIDA

TUESDAY, NOVEMBER 3, 1998
Supreme Court No: 93,436

Third District Appeals
Case No. 97-00265
L.T. 95-17777 CA-04

C.A. BURNETTE ,)
Plaintiff/ PETITIONER,)
vs.)

GROVE ISLE Hotel & Club, et al., a Florida Corporation,
BERNARD LERNER, OFFER NISSENBAUM.
Defendant/RESPONDENT.)
****

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3 (b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court.

SHAW ,KOGAN, WELLS, ANSTEAD AND PARIENTE, II, concur.

A True Copy
Test;

"s/ Sid J. White"

IN THE DISTRICT COURT
APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1998
WEDENESDAY, JUNE 10, 1998

Third District Appeals
Case No. 97-00265
L.T. 95-17777 CA-04

C.A. BURNETTE ,)
APPELLANT
vs.)

GROVE ISLE Hotel & Club, et al., a Florida Corporation,
BERNARD LERNER, OFFER NISSENBAUM.
APPELLEES

* * * * * * * * * * * * * *

Upon consideration, appellant's motion for rehearing and motions for certification are hereby denied.
NESBITT, GODERICH, AND GREEN, J.J., CONCUR.
Appellant's motion for rehearing en banc is denied.
A True Copy
ATTEST;
LOUIS J. SPALLONE
Clerk District Court of Appeal, Third District

SUPREME COURT OF THE UNITED STATES

NO.
A.-624
C.A. Burnette,
Petitioner

v.

Grove Isle Hotel & Club, Inc. et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner.

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above- entitled case, be and the same is hereby, extended to and including 25 Feb., 1999.

" s Anthony Kennedy"
Associate Justice of the Supreme
of the United States

Court \

Dated this 28 Th.
Day of January, 1999.

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KIND OF INSTRUMENT

CERTIFIED COPY of the following instrument transmitted to the District Court has been numbered to coincide with the original

01/16/97	**FINAL JUDGMENT**	**PAGES 517-518**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION
CASE NO. 95-17777 CA 04

C.A. BURNETTE,
PLAINTIFF,
VS.
GROVE ISLE CLUB, ET AL., A FLORIDA CORPORATION, GROVE ISLE ASSOCIATION, INC. A FLORIDA CORPORATION, BERNARD LERNER, OFFER NISSENBAUM AND JOSE REYES,

DEFENDANTS.

MIAMI, FLORIDA
THURSDAY, JANUARY 16, 1997

The above-entitled case came on for hearing before the Honorable Sidney Shapiro, Judge of the above -styled court, at the Dade County Courthouse, commencing at 2:00 p.m.

APPEARANCES:
No appearance
on behalf of the Plaintiff

RICHARD WASSENBERG, ESQ.
On behalf of Defendant
Grove Isle Club, Inc.

BRUCE TELANDER, ESQ.
on behalf of Defendants Grove Isle Association and Jose Reyes.

IRENE L. ELLIOTT, REPORTER

CERTIFICATE OF REPORTER

STATE OF FLORIDA:
S.S.
COUNTY OF DADE :

I, IRENE L. ELLIOTT, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 21 St. day of January 1997.

_"s Irene l. Elliott "

IRENE L. ELLIOTT, RPR

CERTIFIED SHORTHAND REPORTERS. INC.
MIAMI 374-6545 FORT LAUDERDALE 925-6545

page 2

1 Mr. WASSENBERG: If I may, you Honor, I'am 2 here today on behalf of the GROVE ISLE CLUB, INC. 3 to strike the plaintiff's pleadings as a sanction for failure 4 to comply with the Court's orders regarding discovery.

page 14.

4 Mr. WASSENBERG: Then this order that I 5submitted to the Court will be appropriate.
6 THE COURT: I think the rate is 10 percent now.

IN THE CIRCUIT COURT OF THE 11 TH. JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 95-17777 CA-04

C.A. BURNETTE ,)
PLAINTIFF
vs.)

GROVE ISLE Hotel & Club, et al., a Florida Corporation,
BERNARD LERNER, OFFER NISSENBAUM, GROVE ISLE ASSOCIATION, INC. AND JOSE REYES
DEFENDANT

ORDER GRANTING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S PLEADINGS AS A SANCTION FOR FAILURE TO COMPLY WITH COURT ORDERS REGARDING DISCOVERY

On January 16, 1997, came on to be heard the Defendant's GROVE ISLE CLUB, INC. Motion to strike the Plaintiff's Pleadings as a Sanction for Failure to Comply with Court Orders regarding discovery, and the court after hearing argument of the Plaintiff and of the Attorney's for the defendant and further, and further, being fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. The Defendant's motion is granted. This court finds that the Plaintiff, C.A. Burnette, has willfully and deliberately failed to comply with previous Court orders wherein the Plaintiff had been ordered to answer Interrogatories, produce documents and to appear for her deposition. This willful and deliberate refusal to comply with this court's Orders regarding answering Interrogatories, produce

documents and to appear for her deposition. This willful and deliberate refusal to comply with this Court's Orders regarding answering Interrogatories, producing documents, and appearing for a deposition has prejudiced the rights of the defendant in regard to preparing a timely defense to the allegations. Therefore, as an appropriate sanction, this Court strikes with prejudice the Plaintiff's Complaint and strikes with prejudice the Plaintiff's Answer to the Counterclaim for having failed to comply with this Court's previous Orders.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 16 day of January, 1997.

" S Sidney B. Shapiro "
Circuit Court Judge

IN THE CIRCUIT COURT OF THE 11 TH. JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 95-17777 CA-04

C.A. BURNETTE ,)
PLAINTIFF
vs.)

GROVE ISLE Hotel & Club, et al., a Florida Corporation,
BERNARD LERNER, OFFER NISSENBAUM. GROVE ISLE ASSOCIATION, INC. AND JOSE REYES
DEFENDANT

FINAL JUDGMENT IN FAVOR OF DEFENDANTS BERNARD LERNER AND OFFER NISSENBAUM.

_____WHEREAS, this Court on January 16, 1997, ordered that the Plaintiff, C.A. Burnette's, Complaint be stricken with prejudice, it is

ORDERED AND ADJUDGED that Final Judgment is hereby entered in favor of the Defendants, BERNARD LERNER AND OFFER NISSENBAUM. The Plaintiff, C.A. Burnette, shall take nothing by this action and the Defendants, Bernard Lerner and OFFER NISSENBAUM, shall go hence without day.

Done and ORDERED in Chambers, at Miami, Dade County, Florida, this 17 day of January , 1997.

"s Sidney B. Shapiro "
Circuit Court Judge

STATE OF FLORIDA)

COUNTY OF DADE)

I HARVEY RUVIN, Clerk Circuit and County Courts, in and for Dade County, Florida. DO HEREBY CERTIFY that the foregoing pages numbered 517 to 518 inclusive, contain a true and correct copy (copies) of the Order (s) appealed numbered to coincide with the original papers filed in the case of C.A. Burnette, Plaintiff vs. Grove Isle Club, Inc. a Florida Corporation, Grove Isle Association, Inc., a Florida corporation, Bernard Lerner, Offer Nissenbaum, and Jose Reyes, Defendants, Civil Action Case No. 95-17777 CA being as follows to wit:

FINAL JUDGMENT, filed January 16, 1997 and recorded January 21 , 1997 in Official Records Book 17497 at Pages 2635 to 2636

according to the records and files of my office.

IN WITNESS WHEREOF, I have set my hand and affixed the Seal of said Court.

HARVEY RUVIN CLERK OF COURTS BY: "s Jacqueline Abu- Jason "
DEPUTY CLERK 8503 DATE August 20, 1997

SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. 93,436

C.A. BURNETTE

PLAINTIFF, PETITIONER

V.

GROVE ISLE HOTEL & CLUB, BERNARD LERNER, OFFER NISSENBAUM

DEFENDANTS, RESPONDENTS

ON APPEAL FROM THIRD DISTRICT COURT OF APPEAL

CASE NO. 97-00265

LOWER TRIBUNAL NO. 95-17777 CA 04

BRIEF ON JURISDICTION TO THE SUPREME COURT

PLAINTIFF, PETITIONER,

C.A. BURNETTE

C.A. BURNETTE
601 PENNSYLVANIA AVENUE
SOUTH BUILDING NO. 900
WASHINGTON, D.C. 20004
(202) 610-7366

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(4) Beasley v. Girten, 61 So. 2d. 179 (Fla. 1952).....5

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(6) Beauchamp v. Collins, 500 So. 2d 294 (Fla. 3d. DCA 1986).....5

(7) Carr v. Dean Steel Bldgs., Inc., 619 So. 2d. 392, 394 (Fla. 1st DCA 1993).. 5

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(26) Wallraff v. T.G.I. Friday's Inc. 490 So. 2d 50 (Fla. 1986).....5...

(27) Westinhouse Electric Supply Company v. Diplomat Electric, Inc. 221 So. 6

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(28) Wilson v. Woodard, 602 So. 2d. 547 (Fla. 2d. DCA 1992).....6.

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(42) Celotex Corp. v. Catrett, 477 U.S. 317, 106, S.Ct. 2548, 91 LE2d. 265. 6

(43) Joint Anti- Facist Refugee Committee v. McGrath, 341 U.S. 123, 170-172, 71 S.C.t.____624, 95 LEd. 817, 6

(44) Mercer v. Raine, 443 So. 2d. 944 (Fla. 1993)..... .....6.

(45) Roller v. Holly, 176 U.S. 398, 20 S Ct., 410, 44 L.Ed 520 (1900 .) 6

(46) Stanley v. Illinois, 405 U.S. 645, 647, S.Ct. 1208, 331 LEd. 2d. 551. 6

(47) The Florida Bar Complainment v.s. Keith Roberts 689 So. 2d. 1049 (Supreme Ct. of (Fla. 27, 1997) 6,9

THE SUPREME COURT OF FLORIDA
Supreme Court Building
500 South Duval Street
Tallahassee,Florida 32399

Supreme Court No: 93,436

Third District Appeals
Case No. 97-00265
L.T. 95-17777 CA-04

C.A. BURNETTE ,)
Plaintiff/ PETITIONER,)
vs.)

GROVE ISLE Hotel & Club, et al., a Florida Corporation,
BERNARD LERNER, OFFER NISSENBAUM.
Defendant/RESPONDENT.)

PLAINTIFF'S/ PETITIONER'S BRIEF ON JURISDICTION
TO THE SUPREME COURT OF FLORIDA

COMES, NOW Plaintiff/ Petitioner, C.A. Burnette, pro se, hereby presents her brief on Jurisdiction to the Supreme Court, and request to , invokes the discretionary jurisdiction of the Supreme Court to review the decision of this court rendered June 10, 1998. The decision., expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. E., passes on a question certified to be of great public importance.

F. is certified to be in direct conflict with decisions of other district courts of appeal.

Petitioner shows as just cause for jurisdiction of the Supreme Court for the following reasons:

STATEMENT

I am compelled to inform you that my appeal contains issues of great public importance. Even though it gives me no pleasure to report a Judge or an Attorney, I have had to do so because of their egregious acts. If the public does not hold officials of the Court accountable then what would become of our system of justice!

For example the Court Broom situation.

The Third District Court of Appeals erred in not reversing the lower Courts decision, because they failed to address Federal and State laws to uphold , Constitutional rights of Due Process of the Plaintiff. Plaintiff, was denied appearance of a motion calendar hearing without proper notice, when prior approval for a telephone hearing had been granted. Plaintiff/ Petitioner's, case was dismissed based on a filed false order by the Defendant/ Respondent., Richard Wassenberg.

Richard Wassenberg, did nor file any Objection to the answers, that Plaintiff submitted from the May 28,1996 Hearing. Because the Court had Ordered for him not to revisit this issue. It is the Plaintiff contention that Richard Wassenberg , waited knowing that Judge Robbie Barr was leaving and that a new Judge (Judge Shapiro) would be taking over this division. He then filed after waiting 5 MONTHS, with no objections, a new Motion on the same matter that he was ordered not to revisit again. 2. The Defendants Counsel Richard Wassenberg has on a consistent basics changed the language of the Orders to reflect mistruths for his benefit. For example the Hearing that the Motion is based on is the Hearing of October 29, 1996. The ORDER from Judge Sidney Shapiro was as follows :

ORDER

The Plaintiff, C.A. Burnette, was to answer 1,2,3, only, and not allowed to Object, Plaintiff was instructed that if she was not going to attend the upcoming Deposition that she was to notify the Court in writing, as so to not be a no show.

Plaintiff, responded to the Order by complying in a timely manner and resubmitted her original answers for 1,&2, THAT HAD BEEN PREVIOUSLY ACCEPTED BY THE COURT, as well as answering 3. Plaintiff, also notified the Court of a reschedule of the Deposition as well as Defendants Counsel. In doing so the Plaintiff contends that she has complied forthwith on this Order.

The Defendants Counsel Richard Wassenberg, made out the Order to read as follows:

That the Plaintiff would comply with prior court orders regarding discovery and that the Plaintiff shall appear for her deposition. This is clearly not the instruction s of the Judge during this Hearing.

Plaintiff filed a motion to the court asking the court to sanction the defendant's attorney nothing was done by the Judge, instead when I asked him if he condoned attorneys submitting false orders he hung up on the Plaintiff., whereupon the Plaintiff called back and asked for an explanation of the conduct, once again the judge did not reply other than to deny the motion.

The Plaintiff offers further that Judge Shapiro, with just arriving in the civil district, had one five minute calendar hearing on October 29, 1996. The next hearing which the Plaintiff was not allowed to appear on January 16, 1997, the case was dismissed. The Plaintiff had always complied with every order in a timely manner and to the best of her ability. This is confirmed by the previous Judge Robbie Barr, in her rulings that compliance had been met. Including the

Plaintiff submitting an Addivadavit that all discoveries had been submitted. The Third Appellate Court copies the Appellees answer brief and uses the term warnings. The Plaintiff, was never warned by Judge Sidney Shapiro or Judge Barr. For Judge Shapiro to dismiss a case without warning or even allowing the Plaintiff to appear was a violation of due process. The Plaintiff submits forty- four cases that shows to dismiss a case is far to severe a penalty, especially when the Plaintiff has never willfully not complied with every order issued by the Court. The Plaintiff, C.A. Burnette, pro-se, in fact has made every effort to overly comply . I feel this is of great public importance when a Judge is notified of false orders being submitted and he signs them and continues to look the other way for what reasons I could only speculate. Even more egregious was the last Order submitted and signed by Judge Sidney Shapiro, where the Defendant's Attorney states on the order that the case has been dismissed with Prejudice and the Counterclaim with Prejudice, when in fact for the record the Plaintiff's court Reporter in the Transcript from the hearing of January 16, 1997, clearly shows the case was not dismissed with prejudice, here again the Judge signs another false order.

By reporting a Judge I need not stress this has not made me a popular Appellant. However Justice should be afforded to all whether you are an Attorney or representing yourself Pro-se.

The recent activity and decisions made by the Third District Court of Appeals are of great concern to me. There seems to be the appearance of high impropriety in the removal of my original panel that had sat for over a year and was certainty familiar with my case.

A temporary panel was assigned and even if this is common the new panel consisted of all Judges that had been on the bench with Sidney

Shapiro, in the lower Court, the very Judge that I have reported for Judicial misconduct. I can not see factoring in human nature where this panel could even begin to be fair in their rulings or unbiased and I understand that fact. However this does not negate the fact that the Court is there to provide Justice for all. This case involves Environmental issues in Florida. I have had to carry the burden of reporting these infractions and as a result falsely imprisoned. In addition I have had to represent myself pro-se, because the prominent law firms, even though they wanted to represent me, said since I was reporting a Judge an a very vindictive one they would have to not only politically suffer but would have to move any existing clients before that Judge to a new venue. I have the long list of attorney's that have stated this and could furnish them to the Court if you so desire.

In returning back to the issue of the last panel on my appeal, they have affirmed the lower court's ruling. I then filed for a motion of re-hearing and for a re-hearing EN-BANC, OR TO CERTIFY to be sent to the Supreme Court.

I feel the Court's ruling has missed crucial facts and misapprehended my case. For example they failed to address seven issues in my appeal. Further it appears they went directly to the Appellee's answer brief on page seventeen (17), and copied his statement as well as his cases for their one sentence opinion and ruling. Not only were they on the bench of the Judge I have reported but they also were the presiding Judges on two cases cited by the Appellee. This rulings was issued after only three weeks time from the new panel when previous un complex motions took five to seven weeks.

Plaintiff, cited a total of forty four (44), cases that reflect case law is of intra-district conflict in both the intial brief and reply brief. (detailed in Appendix).

TABLE OF CITATIONS & AUTHORITIES PRESENTED IN THE APPELLANTS INITIAL BRIEF AND REPLY BRIEF.detail Appendix

(1) Florida District Court of Appeal.(2) Anthony v. Schmitt, 557 So. 656 (Fla. 2d. DCA 1990).(3) Atena Insurance Company v. Estero Manufacturing & Building Supply, Inc.

Fla. App. 1965, 174 So. 2d 747 (4) Beasley v. Girten, 61 So. 2d. 179 (Fla. 1952).(5).Beasley, Lifeguard Corp. v. U.S. Corp., So2d 94 (Fla. 2d DCA 1983). (6) Beauchamp v. Collins, 500 So. 2d 294 (Fla. 3d. DCA 1986). (7) Carr v. Dean Steel Bldgs., Inc., 619 So. 2d 392, 394 (Fla. 1st DCA 1993)..(8) Clay Livingston v. State Dep't of Corrections, 481 So. 2d 2 (Fla. 1st DCA 1985). (9) Dave's Aluminium Siding, Inc. v. C.& M. Ventures, 582 So. 2d. 147, (Fla. 3dDCA 1991)...Del Duca v. Anthony, 587 So. 1306 (Fla. 1991). (11)Epps v. Hartley, 495 So 2d 921, 922 (Fla. 4th DCA 1986).

(12) Hernando Martin v. Jose R.E. Batista, 639 So. 630 (Fla 3d DCA 1994).(13) Holl v. Talcott, Fla. 1996, 191 So. 40.(14 Pey v. Turnberry Tower Corp.., 474 So. 2d. 1279 (Fla. 3d. DCA 1985)..(15)Pilkington PLC v. Metro Corporation, 526 So. 2d. 943.. (16) Maxwell v. Rolls Royce Motors, Inc. 522 So. 2d. 1943 (Fla. 4th DCA 1988).(17) Maxwell Summitt Chase Condominium Ass'n v. Protean Investers, Inc. 421 So. 2d. 562 (Fla. 3d. DCA 1982)..(18)Morales v. Four Star Poultry & Provision Co. 523 So. 2d.1183 (Fla. 3d DCA)..(19)Ramos v. Sanchez, 375 So. 2d 51 (Fla. 2d 1979)...(20)Shelia Rules v.Richard Cambell 661 So. 2d 408(Fla 3rd DCA 1995). 21) Southern Pine Corp. v. Capital National Bank, 324 So. 2d 112 3d DCA.. (22) Stresscon Int'l, Inc. v. Ralph Merritt Dev. Corp., 384

(Fla.3d DCA). (23) Tri Star Invs., Inc. v. Miele, 407 So 2d 292 (Fla. 2d DCA 1981).(24) Turner v. Anderson, 376 So. 2d 899 (Fla. DCA 1979).... (25) Ulm's Estate, 345 So. 2d 1099 (Fla. 2d DCA 1977)..(26) Wallraff v. T.G.I. Friday's Inc. 490 So. 2d 50 (Fla. 1986).(27) Westinhouse Electric Supply Company v. Diplomat Electric, Inc. 221 So. 2d 436.(28) Wilson v. Woodard, 602 So. 2d. 547 (Fla. 2d. DCA 1992).FLORIDA RULES(29) Fla. Prof. Resp. D.R. and Fla. Stds. Imposing Law. Sanc. 9.3..4-1.6 (A)...6.0, 6.1, 6.2 6.11, (30) Fla. Code Jud. Conduct Canon .2A, 3B(7). (31)Fla. Code Jud. Conduct Canon 3. (B), (5)..(D)...(E).. (32) Fla. Code of Prof. Resp. d.r. 4-3.5..

(33) F. R. Civ. P. 1.500, (B).3.7, 3.8..(34) Fla. R. Civ. P. 1.510 (A)..(C) (D).(35) Fla. R. Civ. P.R. 1.540 (B), (B3).(36) Fla. R Jud. 2.071.(37) Fla. R. Jud. Adnin 2.060 (d),(k)

(38) Fla. Code of Prof. Resp.Rule 4-8.4 (39) Fla.Rules of Civ. P. Evidence Code ch. 90.104,90.801,90.802 SUPREME COURT (40) Armstrong v. Manzo, 330 U.S. 545, 85 .Ct. 1187, 1191, 14 L.Ed. 2d. 62. (41) Baldwin v. Hale,68 U.S. 223, I WALL., 223, 17 LEd. 531. (42) Celotex Corp. v. Catrett, 477 U.S. 317, 106, S.Ct. 2548, 91 LE2d. 265.

(43) Joint Anti- Facist Refugee Committee v. McGrath, 341 U.S. 123, 170-172, 71 S.C.t. 624, 95 LEd. 817. (44) Mercer v. Raine, 443 So. 2d. 944 (Fla. 1993).(45) Roller v. Holly, 176 U.S. 398, 20 S Ct., 410, 44 L.Ed 520 (1900 .) (46) Stanley v. Illinois, 405 U.S. 645, 647, S.Ct. 1208, 331 LEd. 2d. 551. (47) The Florida Bar Complainment v.s. Keith Roberts 689 So. 2d. 1049 (Supreme Ct. of (Fla. 27, 1997)

The Court failed to address any of my issues as crucial as undue process, malpractice, unethical violations by attorney's as well as the Judge.

I would hope that the factors of me I either being female, pro-se, and a resident of

Washington D.C., had no bearing on the Court not taking me serious.

Lastly, on June 17, 1998, Plaintiff/Petitioner, filed an additional Motion requesting the Chief Justice to intervene and to stay all appellate proceedings pending the disposition on Motion to vacate the panels opinion on the Motions for Rehearing, Re-Hearing En-Banc, or for Certification to the Supreme Court, and as grounds therefore states the following; previous to this Motion Appellant had filed a Motion on Re-Hearing,Re-Hearing En- Banc, or to certify to the Supreme Court.

1. Appellant's Motion for Chief Justice Schwartz, to intervene on the Motions of Rehearing, Rehearing En Banc, or to Certify to the Florida Supreme Court. was received by the Clerk of the Court on April 22, 1998, but was never delivered to Chief Schwartz.

2. The Appellant, concerned after viewing the Order, which did not indicate that Chief Justice Schwartz had intervened or any additional Judges besides the three Judge panel had viewed or voted on the Re- Hearing En-Banc, then called and confirmed upon speaking with Chief Schwartz's Judicial Assistant Deborah Mc Curdy, that in fact the Chief Justice Schwartz had not received the Motion. Deborah Mc Curdy also informed me that after viewing the file she could not locate it. I promptly sent a copy to her attention. Afterwards on my next call the Motion had been located in the file after checking a second time, but had not been delivered to Chief Justice Schwartz.
3.This matter is of great public importance, concerning upholding the Canons of Judicial Conduct., and the Appellant's Constitutional rights.

<u>Under Canon 2A.</u> A judge shall avoid impropriety and the appearance of impropriety in all of the judges activities. (A),. A judge shall respect and comply with the law and shall act at all times in a

manner that promotes public confidence in the integrity and impartiality of the judiciary. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

The Appellant submits that in the initial brief, reply brief, and the Motions for Rehearing, Rehearing En Banc, and to certify to go to the Supreme Court, all contained the information and proof of the record that the statements that Judge Sidney Shapiro, was reported for signing false orders in the lower court and the Appellees Attorney Richard Wassenberg was reported for submitting false orders both to the lower court as well as false statements in his motions and answer brief to the Third Appellate Court.

_____The Appellee Richard Wassenberg falsified statements made by the lower court and filed an Order stating the case had been dismissed WITH PREJUDICE and the counterclaim WITH PREJUDICE. (RIII, 507-508), this is totally false and as proof Appellant asked the court to refer to the submitted Court Reporter's transcript showing for the record the case had been dismissed without prejudice. Also as proof of the record the Order (RIII, 505), completed by Attorney Bruce Telander before leaving the judge's chamber on January 16, 1997, representing the now settled Defendants, that were joiner in this case. To date the court has shown no concern to report or inquire about any of these incidents. I further submit had I been an Attorney I do not think the Attorney or Judge would have so openly conducted themselves in such a blatant manner. The fact that I am representing myself Pro-Se , and a layperson apparently gave them the impression that I would not be astute enough to inquire and become

knowledgeable of the Code of Judicial Conduct, and the Rules of Professional Conduct.

The false submission of Orders and Briefs are serious matters as noted under the, .**Rules Regulating the Florida Bar 6. 0** Violations of duties owed to the legal system. 6.1 False statements, Fraud, and Misrepresentation. The following sanctions are generally appropriate in cases that involve dishonesty, fraud, deceit, or misrepresentation to a court. 6.11 **DISBARMENT** is appropriate when a lawyer: (a) with the intent to deceive the Court, knowingly makes a false statement or submits a false document: or (b), improperly withhold material information, and causes serious or potentially serious injury to a party, or causes a significant adverse effect on the legal proceedings.**6.2 ABUSE OF THE LEGAL PROCESS: DISBARMENT** , is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury to a party or serious interference with a legal proceeding.

RULE 3-7.8 PROCEDURES BEFORE A CIRCUIT COURT

(a) Filing of Motion. Whenever it shall be made known to any of the judges of the district courts of Appeal or any judges of a circuit court or a county court in this state that a member of the Florida Bar practicing in any of the courts of the district or judicial circuit or county has been guilty of any unprofessional act as defined by these rules, such judge may direct the state attorney for the circuit in which the alleged offense occurred to make in writing a Motion the name of the State of Florida to discipline such attorney, setting forth in the motion the particular act or acts of conduct for which the attorney is sought to be disciplined. Petitioner, moves that relief sought on this rule has never been sought by the court.

Further in the recent case The FLORIDA BAR COMPLAINT Vs. KEITH ROBERTS, 689 So. 2d. 1049 (Supreme Ct. of Fla., Feb 27, 1997, states:

.. Courts have added to the penalties recommended by disciplinary boards. Courts may impose sanctions more severe than can the governing disciplinary body. The Supreme Court has recently imposed higher sanctions in the absence of disciplinary records and intentional misrepresentation and fraud. In THE FLORIDA BAR, COMPLAINANT vs. KEITH F. ROBERTS, the Florida Supreme Court added a 90 day suspension to a reprimand, three years of probation, restitution, and a host of other conditions.

Canon 3D Disciplinary Responsibilities. (1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this code shall take appropriate action. (2) A judge who receives information or has actual knowledge that a substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

Canon 3 E Disqualification. (1) A judge shall disqualify himself or herself in a proceedings in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a), the judge has a personal bias or prejudice

concerning a party or a party's lawyer, or a personal knowledge of disputed evidentiary facts concerning the proceedings:_Appellant moved in seeking relief that Motion to vacate panels opinion be granted and a new panel be appointed or the original panel that covered the appeal for a year be reinstated._The Appellant moves that the panel has acted with prejudice and bias and misapprehended the facts of the Appeal or chose totally to ignore the seven points of err by the lower court which included violation of due process, sexual bias, pro-se bias, failure to grant a summary judgment to the Appellant, malpractice of Appellant's original counsel, Judicial misconduct by the Judge, and fraudulent violations by the Appellee's Attorney Richard Wassenberg. As stated in a previous motion the panel served on the lower court with Judge Sidney Shapiro and were the judges on the two cases that the Appellees Attorney used in his answer brief. The judges also quoted the work product of the Appellees answer brief (P.17). The panel failed to address any of the Appellant's forty four (44), cases cited. These accumulation of facts show an impriority in judicial responsibility.

4. Under Florida Rules of Appellate Procedure, 9.331. (d), Rehearing En Banc. Appellant filed on the grounds that the case is of exceptional importance and that the case is necessary to maintain uniformity in the Courts decisions. A rehearing En Banc 1994 Amendment states that a rehearing En-Banc may be ordered by the Chief Judge or by any Judge in regular active service on the court, if a vote is requested. The Appellant has been denied this procedure to occur. As relief the Appellant requested that the Motion to vacate the panels opinion be granted.. Motion to Chief Schwartz was answered and said it was not in his power or jurisdiction to grant the relief sought.

WHEREFORE, Plaintiff/Petitioner, C.A. BURNETTE, for the foregoing reasons respectively requests the Supreme Court to exercise its discretion and entertain the case on its merits. Thank you for the courts time and consideration of this brief. Respectfully,submitted,

:_____

C.A.BurnettePlanitiff/
Petitioner Pro–Se 601 Pennsylvania Avenue
S. Bldg 900 Washington, D.C. 20004
202-610-7366

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by

mail on 15 day of July , 1998 to Richard l. Wassenberg, Esquire, Attorney for Bernard Lerner, Offer Nissenbaum, and Grove Isle 3250 Mary Street, Suite 302 Miami, Florida 33133. Michael l. Hyman, Esquire, co counsel for Defendants, Hyman & Kaplan 44 West Flagler St. Suite 1400 Miami, Florida 33130. Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee 32399.

By: C.A. Burnette_____

_

601 Pennsylvania Avenue S.. Bldg. 900 Washington, D.C. 20004TEL: 202-610-7366

APPENDIX

1. A conformed copy of the District Court of Appeal's p1,2
decesion amd opionion.

2. A copy of the District Court of Appeal's order P3
denying a Re Hearing, Re Hearing En Banc, and certification.

3. Table of citations and Authorities. P4,5,6

4.Cases listed in the citatioins. P 7-11.

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2. Cover letter for Motions served on April 22, 1998. 2

3. Letter from April 22,1998 to Chief Justice Schwartz on Motion to intervene. 3,4,5,

4. Order, Motion, on Rehearing, Rehearing En Banc, or to Certify to Supreme Court. from April 22, 1998 6-12.

5. Judges Biography of Judge Cope and Judge Shevin, showing they did not serve on lower Court with Judge Shapiro. 13-14

6. Judges Biography of Judge Goderich, Judge Green, & Judge Nesbitt, all served with Judge Shapiro on the lower Court. 15-18.

7. USA article proof of corruption in the Miami system. 19-21.

The Court ruled in Shelia RULES v. Richard CAMPBELL, 661 So. 2d 408.(Fla. 3 rd DCA 1995). The District Court of Appeal held that: (1) dismissal of action with prejudice was too severe, and (2) enjoining of plaintiff against further representation was not warranted. Reversed and remanded. The court ruled in citing Carr v. Dean Steel Bldgs., Inc., 619 So. 2d. 392, 394 (Fla. 1st DCA 1993) (dismissal a drastic remedy which should used only in extreme situations and upon a express written finding of willfulness); EPPS v. HARTLEY, 495 So. 2nd 921,922 (Fla 4 th DCA 1986) power to dismiss a complaint is not unbridled). Also the court ruled in the case of HERNANDO MARTIN v. Jose R.E. BATISTA, 639 So. 2d. 630 (Fla.. 3 rd. DCA 1994). The District Court held that dismissing suit with Predjudice in absent of malfeasance by party was an abuse of discretion. Dismissal of action is drastic remedy which should only in extreme situations and upon showing of deliberate and contumacious disregard of the trial court's authority. The case was reversed and remanded.

In a long line of Florida cases. The Appellate Courts rulings have reversed trial courts, for imposing the ultimate sanction of dismissal with prejudice when that penalty was not commensurate with the offense. Cases in support of;

Beasley; Lifeguard Corp. v. U.S. Home Corp., 429 So. 2d 94 (Fla. 2 nd DCA 1983); Tri

Star Invs., Inc. v. Miele, 407 So. 2nd 292 (Fla. 2nd. DCA 1981); Turner v. Anderson, 376 So. 2d 899 (Fla. 2d DCA 1979); Ramos v. Sanchez, 375 So. 2d 51 (Fla 2d DCA 1979); In re Ulm's Estate, 345 So. 2d 1099 (Fla. 2d DCA 1977); Clay; Livingston v. State, Dep't of Corrections,481 So. 2d 2 (Fla 1st DCA 1985); Stresscon Int'l, Inc. v. Ralph Merritt Dev. Corp., 368 So. 2d 384 (Fla. 3 d DCA).

In essence the Rule expressed in Atena Insurance Company v. Estero Manufacturing & Building Supply,

Inc. Fla. App. 1965, 174 So. 2d 747 applied an required a reversal of the 'final judgment ' entered on the order granting motion for partial summary judgment. The reversal of that partial final summary judgment did not authorize or direct a dismissal of the cause with prejudice . The order of dismissal with prejudice was reversed and the cause remanded for further proceedings to properly determine the issues raised by the pleadings between the two parties.

The Plaintiff, moves that the Judge erred in not granting Summary Judgment to the Plaintiff. On the foundation of the foregoing rules Plaintiff would request of the Court

to reverse the final judgment and Counterclaim against the Plaintiff and award initial Summary Judgment to the Plaintiff. In foundation of see; Southern Pine Isle Corp., v. Capital National Bank, 324 So. 2d 112. Where the 3rd DCA, held that the order granting the motion for summary judgment held genuine issues of material fact, therefore the order granting the motion for a summary judgment was reversed and the order of dismissal with Prejudice is vacated and the cause is reinstated. Holl v. Talcott, Fla. 1996,191 So. 2d. 40. Similarly, in Westinghouse Electric Supply Company v. Diplomat Electric, Inc. 221 So. 2d 436, the District Court of Appeal, Third District, held that dismissal of a partial Summary Judgment did not authorize or direct dismissal of case with Prejudice. further, applying Fla. R. Civ. P. 1.500,(B) By the court. When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statue or any order of Court, the Court may enter a default against a party. The Judge erred in not granting the Plaintiff the Summary Judgment, when the Defendants failed to plead or defend the Summary Judgment.

The Ruling set forth by the Court in Pilkington PLC v. Metro Corporation, 526 So. 2d. 943., the District Court of Appeal Third District, held that dismissal was not warranted for even late filing of answers to interrogatories, striking Counterclaim to cross claim as sanction for discovery violation. Dismissal was not warranted for plaintiffs' failure to answer initial set of interrogatories or file timely objection where they did comply with subsequent order. In Mercer v. Raine, 443 So 2d. 944 (Fla.1993), the Supreme Court of Florida stated:

The striking of pleadings... for non-compliance with an order compelling discovery is the most severe of all sanctions which should be employed only in extreme circumstances. A deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, as will, bad faith, willful disregard or gross indifference to an order, or conduct which evinces deliberate callousness.

In support of the foregoing Plaintiff, has always in a willful, honest and forth coming answered all Orders to the Court in a timely manner and tried to the best of her ability as it was in the Plaintiffs' best interest to move to the requested Jury trial. The setbacks have been the Insurance Attorney's papering the Plaintiff and attempting to take advantage of a Pro-Se, and at all cost to have her case dismissed.

see Wallraff v. T.G.I. Friday's, Inc., 490 So. 2d. 50 (Fla. 1986) (failure to attend deposition does not warrant dismissal absent finding of willfulness or bad faith) Where as Plaintiff, notified the Court and Defendants as per the law of non attendance of Deposition. further, Maxwelll v. Rolls Royce Motors, Inc.,522 So. 2d. 1043 (Fla. 4 th DCA 1988) (vague, jumbled, and incomplete responses to discovery requests do not justify dismissal, where Appellant made a good faith effort to comply with discovery orders); a similar case in Morales v. Four Star Poultry

& Provision Co., 523 So.2d. 1183(Fla. 3d. DCA 1988) (where some materials already in propionate's possession and interrogated party less than forthcoming in producing other documents, striking of the pleadings too severe for infraction). The Plaintiff always made a good faith effort.

Even though the Plaintiff has never been late on any orders, the case of Beauchamp v. Collins, 500 So. 2d. 294 (Fla. 3d. DCA 1986) (dismissal reversed w

here documents were not timely submitted but no showing in bad faith, trial court erred in striking pleadings); Also in Pey v. Turnberry Towers Corp., 474 So. 2d 1279 (Fla. 3d DCA 1985) (striking pleadings for failure to file timely answers to interrogatories too severe a penalty). see also Maxwell; Summit Chase Condominium Ass'n v. Protean Investers, Inc., 421 So. 2d 562 (Fla. 3d DCA 1982) (inadequate interrogatory responses do nor support dismissal. In support from thereof, the Judge erred in the dismissal of Plaintiff case with Prejudice, based on non compliance of prior Discoveries. The previous Judge Barr ruled that the Plaintiff complied, otherwise there would have been some sanctions in the last two years, had there not been Compliance.

Consequently, since the record reflects no malfeasance on the part of the appellant, we find that the trial court abused it's discretion by dismissing the Appellant's case. See Dave's Aluminium Siding, Inc. v. C& M Ventures, 582 So 2d 147, 147 (Fla. 3d DCA 1991); United States Fidelity & Guar. Co. v. Herr, 539 So. 2d 542, 543, (Fla. * 631 3d DCA 1090); Beauchamp v. Collins, 500 So. 2d ,295 (Fla. 3d DCA 1986),

We reverse and remand for further proceedings consistent herewith.

In cases ruled on by the Appellate courts, there are many that have reversed trial courts for imposing the ultimate sanction of dismissal with prejudice when that

penalty was not commensurate with the offense. The following cases demonstrate this foundation. See cases:

Beasley; Lifeguard Corp. v. U.S. Home Corp., 429 So. 2d 94 (Fla. 2 nd DCA 1983); TriStar Invs., Inc. v. Miele, 407 So. 2nd 292 (Fla. 2nd. DCA 1981); Turner v. Anderson, 376 So. 2d 899 (Fla. 2d DCA 1979); Ramos v. Sanchez, 375 So. 2d 51 (Fla 2d DCA 1979); In re Ulm's Estate, 345 So. 2d 1099 (Fla. 2d DCA 1977); Clay; Livingston v. State, Dep't of Corrections,481 So. 2d 2 (Fla 1st DCA 1985); Stresscon Int'l, Inc. v. Ralph Merrritt Dev. Corp., 368 So. 2d 384 (Fla. 3 d DCA).

Further, the Supreme Court, has encouraged, to establish a tradition of discourging sanctioned that simply cause a party to sue its lawyer for malpractice; see;

Beasley v. Girten, 61 So. 2d 179 (Fla 1952); Ramos v. Sanchez, 375 So 2d 51 (Fla 2d DCA 1979); Anthony v. Schmitt, 557 So. 2d 656(Fla 2d DCA 1990), approved, Del Duca v. Anthony, 587 So. 1306 (Fla. 1991); Wilson v. Woodard, 602 So. 2d 547 (Fla. 2d DCA 1992).

IN THE DISTRICT COURT
APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO: 97-00265
CASE NO. L.T. 95-17777 CA-04

C.A. BURNETTE ,)
PLAINTIFF
vs.)

GROVE ISLE Hotel & Club, et al., a Florida Corporation,
BERNARD LERNER, OFFER NISSENBAUM, GROVE ISLE ASSOCIATION, INC. AND JOSE REYES
DEFENDANT

INASMUCH As the Chief Judge has no authority or jurisdiction herein, the relief requested in appellant's pleading filed on June 23, 1998 is hereby denied.

A True Copy
ATTEST:
LOIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By: "s Alice Goodrich"
Deputy Clerk

SUPREME COURT OF FLORIDA

FRIDAY, SEPTEMBER 11, 1998

C.A. BURNETTE

Petitioner,

v.

CASE NO. 93,436

GROVE ISLE CLUB, INC. et al.,

Respondents.

Petitioner's Motion to Sanction Respondent Under Florida Judicial Rules of Administration For Violations Pursuant To Rule 2.060 (j) And Under The American Bar Association Model Code Of Professional Responsibility, Canon 2, DR2-110 (A), (1) , (2), (3), filed in the above cause is denied.

A True Copy
Test
"s Sid J. White
Clerk, Supreme Court

EX JUDGE
Miami Herald (MH) Sat June 10, 1995
By: Tom Dubocq Herald Staff Writer
Edition: Final Section

Court Broom convict Roy Gelber, terrorized behind bars with death threats and a bloody beating, won a substantial cut in his prison sentence Friday for testifying against other judges and lawyers arrested in the massive bribery scandal.

Gelber, a former Dade County Circuit Judge, will be released in two years under the reduction ordered by U.S. District Judge James Lawerence King.

I haven't had one single day of serenity." Gelber said of his three years in prison. Every night is like a replay of a bad twilight Zone episode I go over the bad things I did, over and over. I am truly remorseful. I am ready to go home."

King denied a request that he serve the remainder of his sentence under house arrest. The Judge approved prosecutors recommendation that Gelber's sentence be cut to five years because of his testimony in four bribery and kickback trials. He began serving a 12 year sentence in 1992.

. . . . Gelber resigned from the bench in 1991 after pleading guilty to federal racketeering charges. His license to practice law was yanked and his wife divorced him.

USA TODAY

Tuesday April, 21, 1998

MIAMI'S vices- Life in a city seduced by scandal.

COVER STORY

CORRUPTION ENDEMIC AND SOMETIMES UNBELIEVABLE

By Laura Parker
USA TODAY

MIAMI– . . . . Miami's corruption is so entrenched it seems to reach the highest levels of government, and Miami is the kind of place where small bribes are kissed off as tips. It's like a new game show, Corrupt-A-Rama", says lawyer Mark Schnapp, who headed the U.S. Attorney's public corruption unit here. We used to joke that Miami was just one big case.

In a perverse sort of way corruption has become a matter of civic pride. George Magazine , edited by John F. Kennedy Jr. named Miami as the 10 most corrupt U.S. city.

Miami leads the nation in Federal public corruption cases. Some 40- odd defendants, including mayors, judges, cops, lawyers, county and city commissioners, and an assortment of government bureaucrats have been indicted, though not all convicted in the last decade. It's not merely the volume of the corruption that sets Miami apart but the sheer audacity of it all. How else to explain the Judge who sold an undercover informant's name ? . . . .

Court Broom- coverage of corruption and arrest of Judges is covered in over 400 articles in the Miami Herald by Don Vannata.

Respectfully submitted,

C.A. Burnette Petitioner .
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